

104 CMR 26.00: ORGANIZATIONAL STRUCTURE AND CITIZEN PARTICIPATION

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26.01: Legal Authority to Issue

The Department is authorized by M.G.L. c. 19, § 2 to adopt, amend and repeal regulations to carry out its responsibilities.

26.02: Organization of the Department

(1) The Commissioner of the Department of Mental Health has, and exercises, supervision and control of the Department. It is within the discretion of the Commissioner to establish divisions and regional management systems within the Department. For administrative purposes, the Department's organization shall include a Central Office, Area Offices, and such other offices as may be designated from time to time by the Commissioner. The Commissioner shall appoint and assign areas of responsibility to such deputy and subordinate commissioners and other agents and officers as the Commissioner determines to be necessary to carry out the work of the Department. The Commissioner's authority as governing body for all facilities controlled by the Department shall pass through and be exercised by such officers as are designated by the Commissioner.

(2) The Department is authorized by M.G.L. c. 19, § 12, to establish a geographic structure for the organization and provision of mental health services. The Commissioner shall determine the number and size of geographic areas for this purpose. Each area is accountable for providing access to the comprehensive program of mental health services for individuals who live within its geographic boundaries. A reference guide titled *Directory to the Department of Mental Health* describes the geographic structure of the Department and how to access community-based service delivery systems throughout the state. It is available through the Department's Central Office.

26.03: Designation of Departmental Facilities

(1) The Commissioner is authorized by M.G.L. c. 19, § 7 to designate the state facilities under the control of the Department. The following have been so designated by the Commissioner:

- (a) State Hospitals: Medfield State Hospital; Taunton State Hospital; Westborough State Hospital; Worcester State Hospital.
- (b) Community Mental Health Centers with Inpatient Units: Cape Cod and Islands Mental Health Center; Corrigan Mental Health Center; Erich Lindemann Mental Health Center; Quincy Mental Health Center; Dr. Solomon Carter Fuller Mental Health Center.
- (c) Community Mental Health Centers without Inpatient Units: Brockton Multi-Service Center; Massachusetts Mental Health Center; Dr. Harry C. Solomon Mental Health Center.
- (d) State Hospital Psychiatric Units: Hathorne Units of Tewksbury Hospital; Metro Boston Mental Health Units of Lemuel Shattuck Hospital.

(2) Specialized units operated by the Department directly or through contract in a Department facility that are part of the facility's governance structure shall be considered part of that facility.

26.04: Citizen Advisory Boards

(1) Authority and General Requirements.

- (a) Authority. The Department is authorized by M.G.L. c. 19 to provide for and to cooperate with citizen advisory boards at its facilities and at each geographic level of the Department.

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(b) Special State Employees. Subject to the exception below, all appointed members of the Department's citizen advisory boards, as well as all volunteers who may serve on a regular or *ad hoc* committee or subcommittee of a citizen advisory board, shall be special state employees and, as such, are subject to the conflict of interest law, M.G.L. c. 268A. Pursuant to M.G.L. c. 19, § 11A, nothing in M.G.L. c. 268A, § 7, shall prevent a person who has a financial interest, directly or indirectly, in a contract made by the Department from serving as a member of the Human Rights Advisory Committee. Members of such committee shall disclose any such financial interest by written notification to the Commissioner and the State Ethics Commission.

(c) Waiver. With respect to any person nominated for appointment to a citizen advisory board, the qualification standards set forth in 104 CMR 26.04 may be waived by the Commissioner for good cause except where such standards are otherwise required by law.

(d) Application of Open Meeting Law. The meetings of any board established under M.G.L. c. 19 or subject to 104 CMR 26.04 shall be subject to the provisions of M.G.L. c. 30A, § 11A½, concerning the meetings of governmental bodies.

(e) General Requirements. The following requirements apply to all citizen advisory boards subject to 104 CMR 26.04.

1. Membership requirements.

- a. Each board shall consist of no more than 15 members;
- b. No member may be an employee of the Department;
- c. No member may be an employee of a not-for-profit or other public or private service provider agency that contracts with the Department;
- d. No more than five of the members may be employees of the state;
- e. Members shall represent the entire geographic area covered by the board;
- f. Members shall be sworn to the faithful performance of their duties and shall receive orientation and training upon their appointment;
- g. Members shall serve without compensation, but each member shall be reimbursed by the state for all reasonable expenses incurred in the performance of his or her duties;

2. Terms of Office.

- a. The term of office for citizen advisory boards is three years;
- b. In the event of a vacancy in the membership of a citizen advisory board where the term of a former member's appointment has not yet expired, the appointing authority for that board may appoint a member who shall serve for the remainder of that unexpired term;
- c. No member shall be appointed to serve more than two consecutive three year terms;
- d. A person must wait for at least one year after completing a second consecutive three-year term before becoming eligible for reappointment.

3. Duties and Powers of Citizen Boards.

- a. To educate the public regarding the needs of individuals with mental illness and their families;
- b. To receive and review regular reports concerning the Department's programs and services;
- c. To make recommendations to the Commissioner or designee based on the review of regular reports;
- d. To hold at least four regular meetings in each year, and convene special meetings on the call of the board's president or ten members of the board, or by the Commissioner or designee, provided that the Commissioner or designee may participate in all meetings but may not vote;
- e. To appoint any permanent or *ad hoc* advisory committee that the board deems necessary, or as specified in the bylaws. The term of office for any member of such a committee shall be determined by the board, or as specified in the bylaws;
- f. To elect from its members annually a president and such other officers as it deems appropriate, or as required by law;
- g. To enact bylaws for its proper organization and procedures at meetings, provided that the bylaws and any subsequent amendments must be submitted to the Commissioner or designee for approval.

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(2) Community Mental Health Area Boards. The Commissioner shall appoint in each Area, with the advice of the Area Director, a Community Mental Health Area Board ("Area Board"). In addition to the general requirements listed at 104 CMR 26.04(1)(e), the membership requirements, terms of office, and duties and powers of each Area Board shall be as follows:

(a) Membership Requirements.

1. Two thirds of the members must live within the Area and the remaining members must either live or work within the Area;
2. Membership of the Area Board should reflect the geographic and demographic diversity of the Area. When making appointments, the Commissioner shall include, but not be limited to, persons who are or have been recipients of mental health services, including adults 60 years of age or over, family members or guardians of recipients of mental health services, including family members or guardians of children under 19 years of age currently receiving services, and persons representing racial and cultural minorities;
3. Membership on the Area Board shall include one representative from the board of trustees of each state hospital located within the Area;
4. Membership on the Area Board shall include one representative from each Site Board in the Area.

(b) Appointment and Terms of Office. The Commissioner shall appoint and may remove Area Board members. Appointments shall be as follows:

1. Upon the expiration of the term of any member of an Area Board, the Commissioner shall appoint a successor for a term of three years;
2. Each Area Board, in conjunction with the Area Director, shall suggest for consideration by the Commissioner one or more names for each expiring term or vacancy.

(c) Duties and Powers of Area Boards.

1. To act as the representative of the citizens of the Area;
2. To take cognizance of the unique needs of the various natural service areas within the Area;
3. To advise the Area Director regarding local needs and resources in the development of comprehensive mental health services in the Area and on matters of importance to the Area and the Department;
4. In a manner determined by the Commissioner, to consult in the recruitment and selection of the Area Director to be appointed by the Commissioner;
5. To participate in the review of the annual goals, annual plan and the proposed annual budget of the Area, and make recommendations to the Area Director in regard thereto;
6. To consult with the Commissioner or designee in personnel recruitment and appointment policies and in the establishment of program priorities for the Area;
7. To consult with the Commissioner or designee on the admission policies for all facilities and services, and policies regarding relationships with other agencies and organizations;
8. To review programs and services which are part of the program of the Area, including those which are not conducted with state-operated facilities;
9. To receive and administer any gift or bequest of personal property or funds in trust, or any grant or devise of lands made to its use in trust in the interest of the Area program of mental health services;
10. To communicate with the statewide Mental Health Advisory Council regarding matters concerning the Area;
11. To recommend for consideration by the Commissioner one or more members for appointment to the board of trustees of a state hospital located in the Area.

(3) Site Boards. The Commissioner or designee shall appoint for each natural service area with an Area, a Site Board. In addition to the general requirements listed above at 104 CMR 26.04(1)(e), the membership requirements, terms of office, and duties and powers of each Site Board shall be as follows:

(a) Membership Requirements.

1. Two thirds of the members must live within the geographic area served by the Site Board and the remaining members shall either live or work within the geographic area;

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2. Membership of the Site Board should reflect the geographic and demographic diversity of the area. When making appointments, the Commissioner or designee shall include, but not be limited to, persons who are or have been recipients of mental health services, including adults 60 years of age or over, family members or guardians of recipients of mental health services, including family members or guardians of children under 19 years of age currently receiving services, and persons representing racial and cultural minorities.
 - (b) Appointment and Terms of Office. The Commissioner or designee shall appoint and may remove Site Board members. Appointments shall be as follows:
 1. Upon the expiration of the term of any Site Board member, the Commissioner or designee shall appoint a successor for a term of three years;
 2. Each Site Board, in conjunction with the Area Board shall suggest for consideration by the Commissioner one or more names for each expiring term or vacancy.
 - (c) Duties and Powers of Site Boards.
 1. To act as the representative of the citizens of the geographic area served by the Site Board;
 2. To advise the Area Board and Area Director regarding local needs, resources, and matters of concern in the geographic area served by the Site Board;
 3. To participate in the review of the Area's proposed annual budget;
 4. To participate in the development of programs for the geographic area served by the Site Board;
 5. To attend regularly scheduled meetings with program provider representatives in order to promote high quality programs and services;
- (4) Boards of Trustees for State Hospitals. In addition to the general requirements listed at 104 CMR 26.04(1)(e), the membership requirements, terms of office, and duties and powers of the State Hospital Boards of Trustees provided for by M.G.L. c. 19, s. 9A, shall be as follows:
- (a) Membership Requirements.
 1. Members shall be appointed by the Governor;
 2. Eight of the trustees shall be persons who are or have been recipients of mental health services and their guardians or family members.
 - (b) Appointment and Terms of Office. Upon the expiration of the term of any member of a Board of Trustees, the Governor shall appoint a successor for a term of three years.
 - (c) Duties and Powers.
 1. To visit and become familiar with the state hospital. This duty requires board members to personally visit, at least annually, all service delivery areas within the state hospital;
 2. To interact with the Area Board in an effort to ensure coordination of the service delivery system in the Area;
 3. In a manner determined by the Commissioner, to consult in the recruitment and selection of the facility director to be appointed by the Commissioner;
 4. To review and make recommendations concerning the annual budget for the state hospital;
 5. To review programs and services which are a part of the program of the state hospital and oversee the development, establishment and implementation of internal and external monitoring functions within the state hospital, including any monitoring activities carried out by interested citizens;
 6. From time to time, to make suggestions to the Department for improvements in the state hospital, especially those that will make its administration more effective, economical and humane.
- (5) Mental Health Advisory Council. In addition to the general requirements listed at 104 CMR 26.04(1)(e), the membership requirements, terms of office, and duties and powers of the Statewide Mental Health Advisory Council provided for by M.G.L. c. 19, § 11, shall be as follows:
- (a) Membership Requirements.
 1. Members shall be appointed by the Secretary of Health and Human Services with the approval of the Governor;
 2. There must be at least one member from each Area in the state;

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3. Eight of the members must be citizens who are members of the Department's Area Boards across the state;
 4. One member shall be a professional in the field of children's mental health;
 5. At least four of the remaining members shall be appointed to represent one of the following professions and groups: state level medical, psychological, nursing, educational, social work, occupational therapy, or bar associations, associations for mental health, industrial and labor groups, and the clergy;
 6. Membership of the Mental Health Advisory Council should reflect the geographic and demographic diversity of the state. When making appointments, the Secretary shall include, but not be limited to, persons who are or have been recipients of mental health services, including adults 60 years of age or over, family members or guardians of recipients of mental health services, including family members or guardians of children under 19 years of age currently receiving services, and persons representing racial and cultural minorities.
- (b) Appointment and Terms of Office. Upon the expiration of the term of any member of the Advisory Council, the Secretary of Health and Human Services with the approval of the Governor shall appoint a successor for a term of three years.
- (c) Duties and Powers.
1. To advise the Commissioner on policy, program development, and priorities of need in the Commonwealth for comprehensive programs in mental health;
 2. To participate with the Department in holding a regular series of public hearings throughout the state to obtain the views of the Area Boards, and other citizens concerning the programs of the Department and the needs for mental health services;
 3. To make recommendations to the Commissioner based on a review of the annual plan and the proposed annual budget of the Department.
- (6) Human Rights Advisory Committee. The Commissioner shall appoint a statewide Human Rights Advisory Committee. In addition to the general requirements listed at 104 CMR 26.04(1)(e), the membership requirements, terms of office, and duties and powers of the Human Rights Advisory Committee shall be as follows:
- (a) Membership Requirements.
1. A majority of the membership of the Committee shall be comprised of one or more of each of the following: past or present recipients of mental health services or their guardians; family members of such persons; representatives of advocacy organizations; psychologists; psychiatrists; and mental health service providers.
 2. Membership of the Human Rights Advisory Committee should reflect the geographic and demographic diversity of the state. When making appointments, the Commissioner shall include, but not be limited to, persons who are or have been recipients of mental health services, including adults 60 years of age or over, family members or guardians of recipients of mental health services, including family members or guardians of children under 19 years of age currently receiving services, and persons representing racial and cultural minorities.
- (b) Appointment and Terms of Office.
1. The Commissioner shall appoint and may remove Committee members;
 2. The Committee shall suggest for consideration by the Commissioner one or more names for each expiring term or vacancy.
- (c) Duties and Powers.
1. To advise the Commissioner or designee regarding the human and civil rights of clients served by the Department;
 2. To assist the Commissioner or designee in identifying the human and civil rights implications of existing and proposed Department policy and procedure;
 3. To assist the Commissioner or designee in reviewing human rights training programs;
 4. At the Commissioner's request, to consult on the appointment of his or her key advisor on human rights;
 5. To advise the Commissioner's key advisor on human rights within the Department.

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(d) Expectations and Limits of Advocacy. The Department, being mindful of the state conflict of interest law, M.G.L. c. 268A, sets forth and authorizes the following expectations and limits of advocacy by members of the Committee. A committee member's official duties do not preclude representation of or advocacy for any party, including the receipt of compensation for such representation or advocacy, if the committee member acts in accordance with 104 CMR 26.04.

1. General Rule. The Department expects that persons appointed to the Committee who are regularly advocates for the human rights of Department clients (whether or not such advocates are "representatives of advocacy organizations" as provided in 104 CMR 26.04(5)(a)1., whether they are legal advocates or otherwise, and whether paid or unpaid - hereafter referred to as "outside advocates") will bring to their participation on the Committee the knowledge, views and spirit of that outside advocacy, so that the Department may have the benefit of a diverse range of perspectives in order better to protect and respect the human rights of its clients.

2. Limitations on General Rule. If the Committee addresses any matter which involves the rights or obligations of a specific, known person receiving services from the Department, any member of the Committee who is such an outside advocate and who:

- a. has participated or is participating in the same matter as an outside advocate for any party to it, shall disclose to the Committee the relevant facts as to such participation and shall have the opportunity to present to the Committee any information or argument pertaining to the matter, but may not thereafter participate in the deliberations or votes of the Committee or in any advice provided to the Commissioner or other person within the Department regarding the matter.
- b. might thereafter participate in the same matter as an outside advocate for any party to it, shall, before, or as soon as, it is addressed by the Committee, recuse himself or herself so that he or she does not learn any information regarding the matter not otherwise available without membership on the Committee or otherwise participate in the deliberations, votes or advice of the Committee. Any information about the matter gained by reason of the member's presence shall be kept in confidence and not disclosed to anyone outside the Committee. However, the member shall have the opportunity to present to the Committee any information or argument on any relevant general issue pertaining to the matter.

REGULATORY AUTHORITY

104 CMR 26.00: M.G.L. c. 19, § 2.

